

Case number T-561/14

European Citizens' Initiative One of Us and others v. European Parliament, Council of the European Union, European Commission

Observations on the application of the MSI for leave to intervene

The applicants respectfully submit that the application of Marie Stopes International (MSI) is late and has failed to demonstrate an interest in the outcome of these proceedings. MSI's application to be admitted as a third party intervener must therefore be rejected.

General information

1. Before tackling the issue of the lack of standing of MSI, the Court might be interested in receiving some information about MSI and Marie Stopes herself.
2. In 1976, Dr Tim Black took over Marie Stopes Clinic in London, which was going bankrupt, and transformed it into a money-making "social business". According to the Times obituary (12 December 2014 available on MSI's website <http://mariestopes.org/news/tim-black-1937-2014>) *"His vision was to make family planning services a commodity that could be marketed, bought and sold in the same way as aftershave or lipstick. He believed that such services needed to be unlinked from the medical profession and that people should be treated as customers and not patients."*
3. Until 1991, the name of the organisation was "Population Services Family Planning Programme Limited". MSI is present in some 40 countries, the vast majority being developing countries. In 2013, its budget increased by 22%, reaching **£ 211,928,000**¹. Among the main donors, UK's Department for International Development, the US Agency for International Development, the Bill and Melinda Gates Foundation and the European Union. The highest-paid employee earns up to £ 300,000, with a slight variation².

¹ Jenna Pudelek, "Marie Stopes International's income rises 22 per cent to £211.9m", 23 October 2014 http://www.civilsociety.co.uk/finance/news/content/18427/marie_stopes_internationals_income_rises_22_per_cent_to_2119m

² Financial Statements 2013 p. 30 <http://mariestopes.org/sites/default/files/Marie-Stopes-International-Financial-Statements-2013.pdf>

4. MSI provides abortion with a dramatic increase in numbers: 350,000 in 2005, more than 900,000 in 2009, 1.3 in 2010³, 2.2 million in 2012⁴. MSI boasts of having provided **3.3 million abortion and post abortion care services in 2014**⁵.
5. Abortion and post abortion care are counted together, showing that there is no real difference between them. Various sources⁶ affirm that post abortion care is a euphemism to provide abortion where it is illegal. It is done through a method called menstrual regulation, or manual vacuum aspiration (MVA): in case of delay of period, the content of the uterus is suctioned out by a syringe without prior pregnancy test. The sole reason why this procedure is not called an abortion is that there is no certainty about the pregnancy that is being terminated. However, there is certainty that if the woman is pregnant, her pregnancy will be terminated – and the procedure has no other purpose than this one. “Menstrual regulation” is therefore a “conditional abortion”; carrying out such a procedure in a country where abortion is illegal is at best a circumvention of the law, at worst a crime. The cannulae used for MVA are reusable, which results in very low per-procedure cost, but plastic is notoriously hard to sterilize therefore the risk of transmitting AIDS is high.
6. MSI promotes large scale sterilisation, be it tubal ligation or vasectomy, organising vasectomy competitions: at least 200 doctors from some 25 countries around the world performing as many vasectomies as possible in a 24-hour period, (<http://mariestopes.org/news/vasectomy-perfect-contraception>). In a video available on MSI Kenya website (<http://www.mariestopes.or.ke/category/videos>), a physician boasts of having performed 53 vasectomies in only three days.
7. Regarding contraception, MSI recommends long acting methods and distributes long acting progesterone contraceptives – like injectable *Depo Provera* and implant *Jadelle* – targeted to poor women only. Women in Europe and the US do not use them due to the long list of unwanted effects⁷, among which breast cancer, delayed return of fertility, osteoporosis and increased risk of contracting and transmitting HIV/AIDS⁸.

³ Global Impact Report 2010

http://mariestopes.org/sites/default/files/MSI_GIReport_FullFinal_LoRes_Sml_noblanks.pdf

⁴ http://mariestopes.org/sites/default/files/MSI-global-impact-report-summary_0.pdf

⁵ http://mariestopes.org/sites/default/files/MSI-Impact-2014_0.pdf

⁶ Steven Mosher, *Population Control : real Costs, Illusory Benefits* Transaction Publishers, New Brunswick, New Jersey, 2008, p. 191-192; European Dignity Watch, *The Funding of Abortion through EU Development Aid*, 2012,

http://www.europeandignitywatch.org/fileadmin/user_upload/PDF/Day_to_Day_diverse/Funding_of_Abortion_Through_EU_Development_Aid_full_version.pdf; United Nations Sponsored Women’s Clinic in Kenya Admits to Illegal Abortions <https://www.lifesitenews.com/news/united-nations-sponsored-womens-clinic-in-kenya-admits-to-illegal-abortions>; Marie Stopes Representative Promotes Illegal Abortion <https://www.youtube.com/watch?v=9Cf7Rg8zxds>

⁷ Depo Provera: <http://base-donnees-publique.medicaments.gouv.fr/affichageDoc.php?specid=62429736&typedoc=R>; Jadelle is not authorised in

France <http://agence-prd.ansm.sante.fr/php/ecodex/index.php#result>.

⁸ Renee Heffron, Deborah Donnell, Helen Rees, Connie Celum, Nelly Mugo, Edwin Were, Guy de Bruyn,

8. The legal basis for funding the Sexual and Reproductive Health programmes in developing countries is the Regulation on aid for policies and actions on reproductive and sexual health and rights in developing countries (2003). Article 16 states clearly: *“No support should be given under this Regulation to incentives to encourage sterilization or abortion, or to improper testing of contraception methods in developing countries. When cooperation measures are implemented, the decisions adopted at the ICPD, in particular point 8.25 of the ICPD Programme of Action, according to which, inter alia, abortion should in no case be promoted as a method of family planning, must be rigorously observed.”*
9. However, MSI receives funding from the European Union: £ 707,000 in 2010, £ 2,068,000 in 2011 (according to MSI financial Statement 2011 (p. 21), £ 2,045,000 in 2012, £673,000 in 2013, according to MSI financial Statement 2013 (p. 28)⁹.
10. The Company Register Information provided by MSI shows that the organisation was named *Marie Stopes International* in 1991. Marie Stopes was an academic, specialised in fossils, but she is known mainly for having opened the first Birth Control Clinic in the British Empire in 1921 in a poor district of London. A brief survey of her major work, *Radiant Motherhood, A Book for Those Who are Creating the Future* (1920) will cast a new light on the philosophy underpinning MSI's action, especially in poor countries.

Excerpts

11. p. 4 *this book is written pre-eminently for the young, happy and physically well-conditioned pair*
12. p. 236 *Hence by a strange parallel working of divers forces, the best, the thriftiest, the most serious-minded, the most desiring of parenthood are to-day those who are forced by the circumstances into the position of the ancient slave¹⁰ (...) While, on the other hand, **society allows the diseased, the racially negligent, the thriftless, the careless, the feeble-minded, the very lowest and worst members of the community, to produce tens of thousands of warped, and inferior infants.** If they live, a large proportion of these are doomed from their very physical inheritance to be at the best but partly self-supporting, and thus to **drain resources of those classes above them** who have a sense of responsibility. **The better classes, freed from the cost of the institutions, hospitals, prisons, and so on, principally filled by the inferior stock would be able to afford to***

Edith Nakku-Joloba, Kenneth Ngure, James Kiarie, Robert W Coombs, Jared M Baeten, for the Partners in Prevention HSV/HIV Transmission Study Team « Use of hormonal contraceptives and risk of HIV-1 transmission: a prospective cohort study » www.thelancet.com/infection Vol 12 January 2012

⁹ <http://mariestopes.org/sites/default/files/Marie-Stopes-International-Financial-Statements-2013.pdf>
http://mariestopes.org/sites/default/files/MSI_financial%20statements%202011_1.pdf

¹⁰ Allowed to have only one child

enlarge their own families, and at the same time not only to save misery but to multiply a hundredfold the contribution in human life-value to the riches of the State.

13. p. 237 *The power of parenthood ought no longer to be exercised by all, however inferior, as an “individual right”. It is profoundly a duty and a privilege, and it is essentially the concern of the whole community to encourage in every way the parenthood of those whose circumstances and condition is such that there is a reasonable anticipation that they will give rise to healthy, well-endowed future citizens. It should be the policy of the community to discourage from parenthood all whose circumstances are such as would make probable the introduction of weakened, diseased, or debased future citizens. It is the urgent duty of the community to make parenthood impossible for those whose mental and physical condition is such that there is well-nigh a certainty that their offspring must be physically and mentally tainted, if not utterly permeated by disease.*
14. p. 243 *It is my prayer that I may present such a racial ideal, not only to my own people but to humanity. It is my prayer that I may live to see in the generation of my grandchildren a humanity from which almost all the most blackening and distressing elements have been eliminated.*
15. p. 247 *It must deal with the terrible debasing power of the inferior, the depraved, and feeble-minded, to whom reason means nothing and can mean nothing, who are thrifless and unmanageable yet appallingly prolific. Yet if the good in our race is not to be swamped and destroyed by the debased as the fine tree by the parasite, this prolific depravity must be curbed. How shall this be done? A very few quite simple Acts of Parliament could deal with it.*
16. (...) *The idea of sterilization has not yet been very generally understood or accepted, although it is an idea which urgently requires assimilating by our civilization. (...)*
17. *It is not, however, necessary to castrate, nor is castration suggested by those who, like myself, would like to see the sterilization of those totally unfit for parenthood made an immediate possibility, indeed made compulsory.*
18. The last chapter of *Radiant Motherhood* is entitled “The Creation of a New and Irradiated Race”. The last sentence calls for “*the fine and splendid race which to-day, as God’s prophet, I see in a vision and which might so speedily be materialized on earth.*” With such devotion to race, it is not surprising then that Marie Stopes was so furious at her son’s marriage because his bride wore glasses – a terrible genetic weakness – that she cut him out of her will in favour of the Eugenics Society¹¹. She also

¹¹ <http://www.dailymail.co.uk/femail/article-2649024/Monster-mother-A-birth-control-pioneer-revered-parenting-guru-But-Marie-Stopes-treated-son-died-week-abominable-cruelty.html>

sent poems to Hitler¹². Her books *Wise Parenthood*, *Married Love* and *Radiant Motherhood* are available on a Nazi website (<http://aryanism.net/archive/books/>).

19. Marie Stopes was close to other leaders in the early race-cleansing eugenics movement, especially Margaret Sanger, historic founder of the *International Planned Parenthood Federation* (IPPF) and of the phrase “*birth control*”. In July 1912, Margaret Sanger, Marie Stopes and others movement held their first international conference in London¹³. Later, Stopes’ “***Society for Constructive Birth Control and Racial Progress*** was organised, and held its first general meeting in October 1921”¹⁴. Marie Stopes invited “*all who care for true human progress*” to join this society or “*a sister Society in America, the Voluntary Parenthood League*”¹⁵, which merged with the American Birth Control League of Margaret Sanger in 1925 (become Planned Parenthood Federation in 1942). In 1922, Margaret Sanger published *The Pivot of Civilization*, exposing her programme. Chapter five, entitled “The Cruelty of Charity”, begins with a quotation of Herbert Spencer: “*Fostering the good-for-nothing at the expense of the good is an extreme cruelty. It is a deliberate storing up of miseries for future generations. There is no greater curse to posterity than that of bequeathing them an increasing population of imbeciles.*” Margaret Sanger criticises charity towards the poor and charity organisations: “*Organized charity is thus confronted with the problem of feeble-mindedness and mental defect. But just as the State has so far neglected the problem of mental defect until this takes the form of criminal delinquency, so the tendency of our philanthropic and charitable agencies has been to pay no attention to the problem until it has expressed itself in terms of pauperism and delinquency. Such “benevolence” is not merely ineffectual; it is positively injurious to the community and the future of the race.*”
20. The opening sentence of MSI annual report for 2010 can be understood in light of this philosophy: “*Marie Stopes International delivers quality family planning and reproductive healthcare to millions of the world’s poorest and most vulnerable women*”¹⁶. Though many of its members are probably unaware of it, the fact that MSI has relatively recently chosen to be named after Marie Stopes and kept this name since 1991 reveals its philosophy: it is clearly eugenic. It aims at eradicating poverty by eliminating the poor, by preventing maternity. The Companies Acts 1985 and 1989 (attached by MSI to its application) show that the present aim of the company is directly in line with Marie Stopes’ principles, put in acceptable language: “*(ii) to educate the public about **population growth and control** particularly about family planning, birth*

¹² http://blogs.telegraph.co.uk/news/geraldwarner/5051109/Marie_Stopes_is_forgiven_racism_and_eugenics_because_she_was_antilife/

¹³ <http://www.hli.org/2012/10/opening-the-gates-wide-to-population-control-abuse/>

¹⁴ Marie Stopes, *Wise Parenthood*, Author’s Preface to the Eighth Edition, p. X

¹⁵ *ibid.*

¹⁶ http://mariestopes.org/sites/default/files/MSI_GIReport_FullFinal_LoRes_Sml_noblanks.pdf

control and contraceptives with a view to preventing the poverty, hardship and distress caused by unwanted conception”.

MSI is not directly affected by the outcome of this case

21. Contrary to what MSI contends in its submission, the form of order sought in this case will not affect MSI's legal or economic situation.
22. Should the Court decide this case according to the form of order sought by the applicants, the practical effect of that decision will be that Communication COM (2014) 355 final will be invalidated and that therefore the European Commission will have to issue a new Communication to respond to the applicants' successful European Citizens' Initiative. However, the content of that new Communication is in no way pre-determined, except that it must be of better quality than the one whose invalidation is sought.
23. If the Commission finds convincing arguments for not initiating a legislative procedure (in the order of those sketched out in §§ 24-26 of the initial application), it may decide not to initiate a legislative procedure.
24. If, by contrast, the Commission adopts a legislative proposal along the lines proposed by the ECI, such a proposal will (as the Commission has rightly pointed out in its defence, § 20) by no means constitute a legal act, but only a preparatory act that has no binding legal effects on MSI. (This notwithstanding, the Commission's decision not to submit a legislative proposal is of course no such preparatory act, because it prepares nothing; cf. § 13 of the applicants' reply to the Commission's defence. The Grand Chamber has recently judged that *“a decision by which the Parliament considers that a petition addressed to it does not meet the conditions laid down in Article 227 TFEU must be amenable to judicial review, since it is liable to affect the right of petition of the person concerned. The same applies to a decision by which the Parliament, disregarding the very essence of the right of petition, refuses to consider, or refrains from considering, a petition addressed to it and, consequently, fails to verify whether it meets the conditions laid down in Article 227 TFEU”* C-261/13 P, *Schönberger v. Parliament*, 9 December 2014; see also case T-308/07). A proposal conforming to the applicants' draft would in no way bind the European Parliament and Council. It would merely give rise to a democratic debate, without pre-empting their decision. Why should MSI so much fear a democratic debate?
25. A binding legal act that might have effects for MSI would come into existence only if, subsequent to a formal legislative proposal of the Commission, such proposal were adopted by the European Parliament and the Council. The effect of the outcome of this lawsuit on MSI, if any, is very remote, uncertain and indirect.

26. It should also be noted that, contrary to the applicants, MSI is not an addressee of Communication COM (2014) 355 final.
27. The invalidation of Communication COM (2014) 355 final will therefore not affect MSI's legal or economic situation.
28. It is, moreover, wrong for MSI to claim that the Communication "*provides legal certainty that (MSI's) activities will not be subject to a blanket ban in terms of funding from the EU*". Despite the Communication, such a blanket ban might in theory at any time be proposed by the Commission and adopted by the Parliament and the Council. The "legal certainty" that MSI refers to does not exist, and therefore cannot be lost.

The possibility of reputational damage to MSI

29. Contrary to what is claimed in MSI's application, this case has no bearing on MSI's reputation.
30. MSI itself bases its application on the claim that a ban of Community funding for « *activities that imply or presuppose the destruction of human embryos* » might harm its economic interests. This cannot be understood otherwise than as an open avowal that MSI is indeed involved in activities that imply or presuppose the destruction of human embryos and that, in view of these activities it indeed receives funding from the Commission.
31. MSI's reputation may be bad – but that bad reputation results from what MSI itself avows, namely that the organisation destroys human embryos on a commercial scale. Irrespective of the legality of such activities, they can never be conducive to a good reputation for those engaging in it. MSI avows that it does not protect the interests of women but its own economic interest in performing abortions.
32. The question whether such embryo-destroying activities are, or are not, legal in the country where they take place is a secondary issue that is of little relevance for MSI's reputation, and of no relevance at all to the outcome of this lawsuit. The ECI requests the Commission to abstain from the funding of abortions not only in countries where it is illegal, but everywhere. As the Commission is well aware (cf. section 3.3 of Communication COM (2014) 355 final), its external action must in any case respect the laws of the countries where it takes place, so that, with or without ECI, it must not fund abortions in countries where it is illegal. An ECI that requests the Commission to abstain from illegal actions would be pointless, because no legal change would be required for this. This is therefore not the objective of the ECI « One of Us ».

MSI as a potential organizer of a successful ECI

33. MSI builds its claim to be admitted as a third party intervener on the claim that it might itself one day decide to launch an ECI, and therefore has an interest in the outcome of this case.
34. The fact, however, is that the applicants in this case have launched a successful ECI, whereas MSI has not. If the Court were to follow MSI's absurd line of reasoning, then it would have to admit everybody who so requests as a third party intervener in this lawsuit, because everybody could make the same claim that one day he might decide to launch an ECI of his own. There is nothing in this argument that sets MSI off against whoever else might make the same assertion.
35. In addition, if MSI really intends to launch an ECI, it cannot have the interest it claims to have, *i.e.* that the ECI remains ineffective and completely worthless as an instrument of participatory democracy. On the contrary, if MSI really were a potential organiser of a successful ECI, then it would have an interest to intervene in this lawsuit on the applicants' side in order to ensure that the ECI becomes an effective instrument for democracy, not on the side of the defendants in order to ensure that it remains ineffective.
36. The claim to be, on the one hand, a potential ECI organizer, and, on the other hand, to have an interest that the European Commission must have the right to reject a successful ECI for no good reasons, is therefore self-contradictory and raises questions with regard to MSI's sincerity.
37. The true problem of MSI is that the baby-killing industry it represents has little or no support among the wider population. This is the true reason why MSI is so worried about the ECI. It fears for its economic interests if a truly democratic debate is launched.

In the light of what is set forth in the preceding paragraphs, the acceptance of MSI's intervention in this lawsuit, would have given a valuable opportunity to expose publicly, in the Court's presence, MSI's eugenic ideology and practices.

However, MSI's application clearly fails to fulfil the conditions that would be required for MSI to be admitted as a third party intervener. The Court will have to reject this application, which is manifestly late, ill-founded and abusive.